In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 480

LARRY AARON HOWZE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Central District of California, petitioner, a Jehovah's Witness classified I-O (conscientious objector) by his local selective service board, was convicted of willfully refusing to perform civilian work in lieu of induction as ordered, in violation of 50 U.S.C. App. 462(a). The court of appeals affirmed *per curiam* (Pet. App. A) and a petition for rehearing was denied (Pet. App. B).

1. Petitioner contends that the work which he was ordered to perform (an unspecified job at the Los Angeles County Department of Hospitals) was inappropriate, since it might have involved the handling of blood which is contrary to his religion. As the court

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of appeals noted, however, petitioner was assigned to the hospital only after he "declined * * * to make a selection among three choices of work offered him in civilian employment" (Pet. App. A1). Moreover, the transcript colloquy (Pet. 6) quoted by petitioner clearly reflects that he "failed to show that the hospital work would have necessarily required him to handle blood" (Pet. App. A1). In these circumstances, there is no warrant for further review.

2. Petitioner also contends that the civilian work program for conscientious objectors, established by Congress under 50 U.S.C. App. 456(j), is unconstitutional because (1) it is an alternative to military conscription, the authorization of which is beyond the power of Congress except in time of a declared war and (2) it amounts to involuntary servitude in violation of the Thirteenth Amendment. These contentions are insubstantial and have been consistently rejected by this Court and others. *E.g., United States* v. *O'Brien*, 391 U.S. 367, 377; *United States* v. *Mitchell*, 369 F. 2d 323 (C.A. 2), certiorari denied, 386 U.S. 972; *United States* v. *Henderson*, 180 F. 2d 711 (C.A. 7), certiorari denied, 339 U.S. 963; *United States* v. *Holmes*, 387 F. 2d 781 (C.A. 7), certiorari denied, 391 U.S. 936; *Badger* v. *United States*, 322 F. 2d 902 (C.A. 9), certiorari denied, 376 U.S. 914.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1970.

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